

STEVEN A. KEGEL,

Plaintiff,

vs.

BROWN & WILLIAMSON TOBACCO
CORPORATION; et al.,

Defendants.

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Case No. CV-N-06-0093-LRH(VPC)

STIPULATION TO AMEND
SCHEDULING ORDER
AND ORDER

Pursuant to Local Rules 6-1 and 7-1, Plaintiff, Steven Kegel, and Defendants R.J. Reynolds Tobacco Company, for itself and as successor-in-interest to Brown & Williamson Tobacco Company and the Reynolds American Inc. Special Severance Pay Plan (named

1
2 erroneously by plaintiff as the Brown & Williamson Tobacco Corporation/Reynolds American,
3 Inc. Special Severance Benefits), recite as follows:

4 1. As previously amended, the Scheduling Order in this case provides that the Joint
5 Pretrial Order shall be filed no later than thirty (30) days after the determination of dispositive
6 motions. (Docket No. 106)

7 2. The Court entered its order granting in part and denying in part the defendants'
8 motion for summary judgment on March 3, 2009. (Docket No. 150) As part of that order, the
9 Court allowed plaintiff to file a Fifth Amended Complaint.

10 3. Plaintiff filed both a motion for reconsideration of the Court's order on summary
11 judgment and a Fifth Amended Complaint on March 26, 2009. (Docket Nos. 155, 154)

12 4. On April 16, 2009, defendant R.J. Reynolds Tobacco Company filed a motion to
13 dismiss the Tenth Claim for Relief added by the Fifth Amended Complaint. (Docket No. 160)

14 5. On September 25, 2009, the Court entered its order granting reconsideration in
15 part and denying the motion to dismiss the Tenth Claim for Relief. (Docket No. 173)

16 6. Defendants have moved to amend the order of dismissal to include the language
17 to permit interlocutory review by the Ninth Circuit Court of Appeals. (Docket No. 175)

18 7. Plaintiff and defendants disagree with respect to the deadline for filing the joint
19 pretrial order in this matter. Plaintiff believes that the joint pretrial order is due on October 26,
20 2009, which would be thirty (30) days from the date of the Court's decision granting
21 reconsideration in part and denying the motion to dismiss the Tenth Claim for Relief.
22 Defendants believe that, if the motion to amend to permit an interlocutory appeal is denied,
23 consistent with the requirements of due process, the Court's decision to allow the plaintiff to file
24 a fifth amended complaint nonetheless allows the defendants time to answer the new claim for
25 relief, seek discovery with respect to that claim and pursue the dismissal of that claim on
26 summary judgment and that the deadline for filing the joint pretrial order expires thirty (30) days
27 after the decision on any such motion for summary judgment.

28 8. Plaintiff and defendants have agreed to extend the deadline for submitting the
joint pretrial order to not earlier than thirty (30) days after the determination of the pending

1 motion to amend to permit interlocutory appeal and the determination of such appeal if allowed.

2 Accordingly, plaintiff and defendants stipulate and ask the Court to approve the
3 following amendment to the scheduling order:
4

5 1. The deadline for submitting the joint pretrial order in this matter shall be no
6 earlier than thirty (30) days after the determination of the pending motion to amend to permit
7 interlocutory appeal and the determination of such appeal if allowed.

8 2. Defendants reserve the right to answer the Fifth Amended Complaint, to seek to
9 reopen discovery, and to seek leave to move for summary judgment on the Tenth Claim for
10 Relief. Plaintiff reserves the right to oppose all such efforts as well as to oppose the defendants'
11 pending motion to amend to permit an interlocutory appeal of the decision denying the motion to
12 dismiss the Tenth Claim for Relief.

13 DATED this 16th day of October, 2009.

14 WHITEHEAD & WHITEHEAD
15 and ROSE LAW OFFICE

16 /s/ Jonathan J. Whitehead
17 by _____

18 Attorneys for plaintiff

MORRIS PETERSON

19 /s/ Suellen Fulstone
20 by _____

21 Attorneys for defendant R.J. Reynolds
22 Tobacco Company and the Reynolds
23 American Inc. Special Severance Pay Plan

24 ORDER

25 IT IS SO ORDERED.

26 DATED this 26th day of October, 2009.

27 
28 _____
LARRY R. HICKS
UNITED STATES DISTRICT JUDGE